

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

WILLIAM MOREE v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Monroe County
No. 86-149 R. Steven Bebb, Judge**

No. E2005-02302-CCA-R3-HC - Filed February 13, 2007

The petitioner, William Moree, petitioned the Criminal Court for Monroe County for relief from his allegedly illegal sentence. Alternatively construing the pleading as one seeking habeas corpus, post-conviction, or other relief, the trial court found that it demonstrated no basis for relief and dismissed the petition. The state moves this court to affirm the judgment pursuant to Tennessee Court of Criminal Appeals Rule 20. We sustain the state's motion and affirm the order of dismissal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

William Moree, Wartburg, Tennessee, Pro se.

Paul G. Summers, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; for the appellee, State of Tennessee.

MEMORANDUM OPINION

The petitioner was convicted by a Monroe County jury of second degree murder and received a sentence of thirty-five years in prison. This court affirmed the judgment on appeal. See State v. William Joseph Moree, No. 107 (Tenn. Crim. App. May 19, 1988), app. denied (Tenn. Jul. 25, 1988).

On July 22, 2005, the petitioner filed a motion to correct an illegal sentence. Therein, the petitioner contended that: (1) he was improperly sentenced by the trial judge rather than a jury of his peers, (2) as a Range I offender he was not eligible to receive an enhanced sentence, and (3) he was improperly sentenced under the provisions of the 1982 Sentencing Act as opposed to the 1989 Sentencing Act. On September 21, 2005, the trial court summarily dismissed the motion. The trial court alternatively found that the pleading was without any legal basis, that it was time-barred as a post-conviction petition, that the propriety of the petitioner's sentence had been previously challenged, reviewed, and affirmed on appeal, and that the pleading failed to assert a cognizable

claim for habeas corpus relief. Lastly, the trial court found the motion to be “utterly groundless.” The petitioner’s timely appeal followed.

Before this court, the petitioner contends that he is entitled to seek correction of an illegal sentence at any time and argues that his motion is neither a post-conviction petition nor a petition for habeas corpus relief. The state responds that the petitioner essentially argues that his sentencing judgment is illegal and void and thus construes the motion as a petition for writ of habeas corpus despite the petitioner’s assertions to the contrary. We find the state’s position well-taken. The Tennessee Supreme Court has clarified that “the proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus, the grant or denial of which can then be appealed under the Rules of Appellate Procedure.” State v. Moody, 160 S.W.3d 512, 516 (Tenn. 2005). To construe the motion at the petitioner’s insistence as one to correct an illegal sentence would leave the petitioner with no avenue for appellate review in this case. See Tenn. R. App. P. 3(b); Cox v. State, 53 S.W. 3d 287 (Tenn. Crim. App. 2001).

Upon our review, however, we conclude that the trial court correctly denied issuance of the writ. “It is well established that an accused confined to prison pursuant to judicial authority may only obtain habeas corpus relief when the accused’s sentence is void or the term of imprisonment has expired.” State ex rel. Stewart v. McWherter, 857 S.W. 2d 875, 877 (Tenn. Crim. App. 1992)(citing Hall v. Heer, 217 Tenn. 392, 398 S.W.2d 71 (1966); State ex rel. Dickens v. Bomar, 214 Tenn. 493, 381 S.W.2d 287 (1964); State ex rel. Grandstaff v. Gore, 182 Tenn. 94, 184 S.W.2d 366 (1945); Adams v. Russell, 179 Tenn. 428, 167 S.W.2d 5 (1942). The petitioner’s claim that his sentence is unlawful because he was entitled to be sentenced under the more favorable terms of the 1989 Sentencing Act is simply without merit. The 1989 Sentencing Act applies only to those offenders who are sentenced after its effective date. See McWherter, 857 S.W. 2d at 875; T.C.A. § 40-35-117. Further, “the enabling legislation for the Act provides that the ‘act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.’” Id.; 1989 Tenn. Pub. Acts, ch. 591, § 115. The record reflects that the petitioner was sentenced on February 2, 1987, over two years before the 1989 Act became effective, and it is therefore inapplicable.

As to his remaining claims, the petitioner does not claim an expired sentence and his sentencing claims do not present a cognizable claim of a void judgment. That is, we find nothing appearing on the face of the judgment to indicate that the sentencing court lacked the statutory authority to render the judgment. See Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998) (citing Archer v. State, 851 S.W.2d 157, 161 (Tenn. 1993)). Moreover, as the trial court correctly found, the propriety of the petitioner’s sentence has been previously determined. On direct appeal, this court held that the petitioner was properly sentenced as a standard offender, that the record supported the finding of enhancement factors, and that the sentence imposed was not excessive. See State v. William Joseph Moree, slip op. at ___. The state correctly contends that the petitioner may not relitigate these sentencing considerations through a collateral attack on his conviction. “It is fundamental that habeas corpus and post-conviction proceedings may not be employed to raise and relitigate or review questions decided and disposed of in a direct appeal from a conviction.” Ray v.

State, 489 S.W. 2d 849, 851 (Tenn. Crim. App. 1972). Lastly, the trial court properly found that the petition, alternatively construed as one seeking post-conviction relief was time-barred. See T.C.A. § 40-30-102(a).

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established that he is entitled to habeas corpus relief. Accordingly, the state's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, JUDGE